

THE INCOME TAX APPELLATE TRIBUNAL
"SMC" Bench, Mumbai
Before Shri Mahavir Singh (JM) & Shri Shamim Yahya (AM)

I.T.A. No. 2272/Mum/2018 (Assessment Year 2010-11)

Ms. Mansi Mukesh Nagda Flat No. C,-401, Pam House CHS Ltd., 16/Mogul Lane Matunga (West) Mumbai-400 016. PAN : AFAPN9947A (Appellant)	Vs.	ACIT-17(2) Piramal Chambers Lalbaug, Parel Mumbai-400 012. (Respondent)
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Assessee by	Dr. P. Daniel
Department by	Shri Akhtar H. Ansari
Date of Hearing	19.09.2019
Date of Pronouncement	03.12.2019

ORDER

Per Shamim Yahya (AM) :-

This appeal by the assessee is directed against the order of learned CIT(A) dated 25.1.2018 and pertains to A.Y. 2010-11.

2. The issue raised is that learned CIT(A) erred in confirming the order of Assessing Officer in treating short term capital gains of Rs. 33,11,542/- as 'business income'.

3. The assessee is in this case is an individual and his nature of business has been referred as investor in shares and securities. During the course of assessment the Assessing Officer noted that perusal of the return of income shows that apart from a small income from other sources, the assessee has reported short term capital gain and long term capital loss on shares transactions and speculation loss. The Assessing Officer observed that total income of assessee constitutes mainly of short term capital gains on share transaction. He found that it was quite high. He noted that this short term capital gain was on account of transaction carried out involving purchase of

shares for Rs. 2,49,99,195/- and sale thereof at Rs. 2,83,86,986/- during the year. That a total of 2,02,938 scrips split out of 134 companies that were sold during the year. That barring a small percentage of such transactions the holding period in these cases varies from one day, four days, one week and fourteen days and the average holding period is around 10-11 days. The Assessing Officer opined that the assessee's activity was in the nature of in the nature of business. He further noted that the assessee has also carried out non delivery based speculative transactions during the year. Dividend received was very miniscule. That opening stock and closing stock of business did not comprise of some scrips. He proceeded to hold that short term capital gain was to be treated as 'business income'. In this process the Assessing Officer also held that the decision of Hon'ble Jurisdictional High Court in the case of Gopal Purohit (122 TTJ 97) is not applicable on the facts of the present case.

4. Upon assessee's appeal learned CIT(A) upheld the action of the Assessing Officer. Against this order assessee is in appeal before us.

5. We have heard both the counsel and perused the records. We find in this case the assessee has been offering short term and long term capital gain consistently in the past. This has never been disputed by the Revenue. It is also undisputed that the assessee as an investor has maintained two separate portfolios one for the speculative and other one of investor. The Assessing Officer has treated as investor to the extent of long term capital loss on shares. Furthermore it is undisputed that the assessee had taken delivery of shares on its purchase and given due delivery of the shares on its sale. In these circumstances, in our considered opinion decision of Hon'ble Jurisdictional High Court in the case of Gopal Purohit (supra) is squarely applicable on the facts of the case. In our considered opinion the authorities below have clearly erred in distinguishing this case. Accordingly, we set aside the orders of authorities below and decide this issue in favour of the assessee.

6. In the result, this appeal of the assessee stands allowed.

Order has been pronounced in the Court on 03.12.2019.

Sd/-
(MAHAVIR SINGH)
JUDICIAL MEMBER

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 03/12/2019

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai

PS